

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

HERBERT APONTE,

Petitioner,

v.

COMMONWEALTH OF
PENNSYLVANIA,

Respondent.

NO. 3:19-cv-00482

(JUDGE CAPUTO)

ORDER

NOW, this 19th of February, 2020, upon review of the Report and Recommendation of Magistrate Judge Joseph F. Saporito (Doc. 14) for plain error or manifest injustice, **IT IS HEREBY ORDERED** that:

- (1) The Report and Recommendation (Doc. 14) is **ADOPTED**.
- (2) Petitioner's Motion for Vacatur of the Dismissal Order on Motion to Appoint Counsel (Doc. 12) and Motion to Vacate Order Dismissing Case (Doc. 13) are **DENIED**.¹
- (3) Petitioner's Motion to Vacate Order Dismissing Case (Doc. 15) is **DENIED** as moot.²

¹

As explained by Magistrate Judge Saporito, these motions are liberally construed as Rule 60(b) Motions for Reconsideration. The Clerk has mistakenly docketed Doc. 12 as a motion for reconsideration of an order denying appointment of counsel to represent the petitioner. The motion (Doc. 12) actually states that it seeks vacatur of the Court's May 8, 2019, order dismissing the petition.

²

To the extent that this motion serves as an objection to Magistrate Judge Saporito's Report and Recommendation, it does not point to specific errors in the Report and Recommendation, and thus fails to trigger de novo review. *See Morgan v. Astrue*, No. CIV.A.08-2133, 2009 WL 3541001, at *3 (E.D. Pa. Oct. 30, 2009) (holding "that objections which merely rehash an argument presented to and considered by a magistrate judge are not entitled to de novo review.").

- (4) The Clerk of Court is directed to mark the case as **CLOSED**.

/s/ A. Richard Caputo
A. Richard Caputo
United States District Judge